

Bureau for Private Postsecondary and Vocational Education UPDATE

Transition from the Council to the Bureau at DCA

Governor Wilson

A little over one year ago, Governor Pete Wilson vetoed legislation that would have continued the Council for Private Postsecondary and Vocational Education (Council) in its present form. The Governor did so in response to concerns about the Council's anti-business environment. At that time, the Governor had not yet decided how and where the Council's functions would be performed. In the negotiations that continued over the next several months, the Governor decided that transferring the functions of the Council to the Department of Consumer Affairs (DCA) would be in the best interest of both schools and students.

There are several reasons why the transfer of the Council's functions to the DCA makes sense:

- ♦ the Governor has been frustrated at the lack of accountability for agencies that have little or no reporting relationship to his office or his Cabinet.
- ♦ DCA performs processes similar to the Council - licensing, accreditation, complaint resolution, and enforcement. DCA regulates individual professionals as well as businesses.
- ♦ DCA is aware of the need to balance business needs against consumer/student protection. DCA supports market and performance incentive approaches rather than intrusive regulation.
- ♦ DCA is accustomed to performance and administrative accountability. DCA uses the formalized Administrative regulation adoption and discipline processes pursuant to the Administrative Procedure Act.

♦ as one of the agencies in the Governor's Performance Based Budgeting Pilot, DCA streamlined operations; DCA is innovative and entrepreneurial.

The State and Consumer Services Agency

The DCA reports to the Governor through the State and Consumer Services Agency. Joanne Kozberg is the Agency Secretary and a member of the Governor's Cabinet. Several other state departments report to the State and Consumer Services Agency, e.g., Franchise Tax Board, Public Employees' Retirement System, State Personnel Board, Department of General Services, Department of Fair Employment and Housing.

The Department of Consumer Affairs (DCA)

DCA is comprised of 27 regulatory boards and 10 bureaus and programs. As a result of the mandated Sunset Review process, three boards were converted to bureaus effective 7/1/97 and another board will be converted effective 7/1/98. These boards, bureaus and programs regulate 2.1 million individuals and businesses in more than 200 professions and occupations.

There are several differences between a board and a bureau or program. A board is comprised of a number of board members appointed by the Governor and Legislature. The board structure is similar to the structure of the current Council. Boards are semi-autonomous, but DCA has numerous oversight responsibilities.

The chief executive officer of a board is appointed by the board.

Bureaus and programs report to the Director of DCA. Bureau and program chiefs are appointed by the Governor. The bureaus and programs have established advisory and technical committees similar to the formal Advisory Committee created by Assembly Bill 71. These advisory committees are primarily comprised of industry representatives to provide technical advice to DCA.

One of the most important benefits of the transfer to DCA is the potential to reduce overlapping functions. Most of the boards and bureaus administer occupational licensing exams. Each of these exams must be occupationally valid. An occupational analysis is conducted approximately once every five years to assess whether the exam measures minimum competency to practice. Frequently, higher failure rates occur following an appropriate modification of the exam. To ensure that failure rates do not continue to be high, it is critical that there be an evaluation of educational curriculum to determine if education appropriately prepares candidates to be minimally competent. Linking the functions of the former Council with DCA will permit a more coordinated working relationship with the schools to resolve these potential problems.

The New Private Postsecondary and Vocational Education Act

The passage of Senate Bill 819 and Assembly Bill 71 (Chapters 77 and 78, Statutes of 1997), creates the new Private Postsecondary and Vocational Education

Act effective January 1, 1998. Chapter 78 transfers regulation of private post-secondary and vocational education institutions from the Council, which sunsets on December 31, 1997, to the DCA.

The new Act, which DCA will be responsible for administering in 1998, is the most difficult to read and understand of any statute DCA has encountered. No one has argued with this assessment. In fact, part of the controversial history of this program is directly attributable to current statutory quagmire.

To address these concerns, DCA had proposed to rewrite the statute to clearly outline the requirements for regulated schools, the processes to be followed, and the protections for students. Unfortunately, DCA's efforts failed during the last legislative year, and DCA has turned its full attention to implementing the new Act.

The Challenges DCA Faces

In approaching its responsibilities under the new Act, the DCA faces many challenges, including the following:

- ◆ management of program transition from the Council to DCA;
- ◆ interpretation and implementation of significant changes in the law through the enactment of AB 71 and SB 819;
- ◆ implementation of significant new program elements, including "good school" provisions and a new category of licensure through registration;
- ◆ establishment of an Advisory Committee to DCA for this program and various special technical committees for program and industry expertise not now present in DCA;
- ◆ re-promulgation of all regulations of the Council consistent with changes in the new Act and conducted under the Administrative Procedure Act;
- ◆ hiring and training of staff for all aspects of the program's operations to replace Council staff (all but 13 staff will have left the Council before December 31st);
- ◆ eliminating backlogs in school approvals, site visits, new or changed course approvals, changes in ownership, student complaints, and tuition refunds;
- ◆ assessing the adequacy of the Student Tuition Recovery Fund which is seriously depleted at this time; and

- ◆ lowering school fees consistent with the reductions mandated by AB 71, and operating with revenue reduced by 20-25%, balanced against adding resources to eliminate backlogs.

A Highlight of the New Act

Attached to this *Update* is a copy of the new Act, that will take effect on January 1, 1998. To assist you in reviewing the new Act, following are highlights of some of the changes. This is not a comprehensive list of all of the changes in the law. The statements contained herein are based on a preliminary review, and are not intended as a complete, final, or binding interpretation of law by DCA. Schools should look exclusively to the new Act and the regulations which the Bureau will promulgate for guidance.

Article 1 - General Provisions

The two-pronged intent of the Legislature remains the same as current law.

Article 2 - Definitions

A number of definitions were changed to reflect changes in the new Act. Most of the definitional changes need to be reviewed in the context of their use in other parts of the new law. Of particular importance are the definitions of "academic year," "continuing education," "private postsecondary educational institution," "short-term career training," and "short-term seminar training."

Article 3 - Exemptions

Non-profit, nationally accredited institutions are exempt from most requirements of the law if they meet specified financial responsibility, faculty, default rate (15%), and operational length requirements, exclusively confer degrees, and have offered a masters, doctorate, or first professional degree for at least five years. (See Section 94750)

Article 3.5 - Transition Provisions

The new law permits any institution operating on December 31, 1997, with a full, conditional or temporary approval to continue to operate under the terms of that approval until that approval expires or the Bureau takes action that affects that approval.

All regulations in effect on June 27, 1997, will be in full force and effect on

and after January 1, 1998, to the extent the regulations are consistent with the new law. (See Section 94760)

Article 4 - Administration

Requires the appointment by the Governor of a Bureau Chief, who must be confirmed by the Senate, and creates an advisory committee to advise the Bureau on the Bureau's administration, licensing, and enforcement functions. Members of the committee will be appointed by the Director of DCA. (See Section 94771)

Permits the Bureau to make unannounced visits, publish an Internet directory of all institutions approved to operate in California, and impanel special committees of technically qualified persons to assist the Bureau in developing standards and evaluating applications and institutions. (See Sections 94774 and 94774.5)

Provides that site visiting teams or any other peer review body established by the Bureau are entitled to a defense by, and indemnification from, the Bureau in any action arising out of the information or testimony to the Bureau to the same extent as if they were public employees. (See Section 94775)

Requires the Bureau to adopt regulations establishing a voluntary arbitration process to resolve disputes between institutions and complainants. (See Section 94778)

Requires the Bureau to make the number and disposition of all complaints against an institution available to the public upon request. (See Section 94779)

Article 5 - Classification of Educational Programs Offered by Postsecondary Institutions

The Maxine Waters provisions of the new Act (Article 7; formerly Article 2.5 of the old Act) beginning at Section 94850, do not apply to the following types of institutions or educational services:

- ◆ an institution that enrolls fewer than 100 students and does not participate in federal student aid programs. (See Section 94785)
- ◆ an institution that is incorporated and has operated as a non-profit benefit corporation or non-profit religious corporation for at least five years. (See Section 94785)
- ◆ an educational service the total charge for which is \$1000 or less and is

♦ not funded by federal student aid loan or grant programs. (See Section 94786)

♦ an educational service for which a degree is conferred (except for occupational associate degrees) upon the completion of a program of two or more academic years and is scheduled to be completed in less than 17 months, or on students who have completed a graduate program of one or more years. (See Section 94790)

♦ an educational service for which an occupational associate degree is conferred upon completion, and in which there is not a related certificate or diploma program, for the period after one academic year (30 weeks) or after the student has completed the certificate or diploma program, whichever is later. (Note that students who are awarded a certificate/diploma may be counted in the completion statistics for that program.) (See Section 94790)

♦ an educational service offered as continuing education in subjects that licensees are required to take as a condition of continued licensure. (See Section 94790)

♦ an educational service offered exclusively for examination preparation for licensure in a recognized profession, such as medicine, dentistry, accounting, or law. (See Section 94790)

♦ an educational service that is three or more academic years, is scheduled to be completed in less than 27 months, does not admit students more than four times per year, and confers a diploma upon completion. (See Section 94790)

♦ an educational service that offers training exclusively in the fine or performing arts, in the body arts, or in another similar field designated by the Bureau. (See Section 94790)

♦ an educational service that is more than 30 months in length, in which the total charge is payable in equal monthly installments over the length of the program, and the student is not obligated to pay an advance payment of more than one month. (See Section 94790)

♦ an educational service that for all students enrolled is entirely and exclusively offered pursuant to a contract between the institution and a community college, a high school, or an employer which has the responsibility for the cost, and the students are not required to pay

any part of the charges. (See Section 94790)

In addition, an institution that provides test preparation for civil service and other government employment exams is exempt from the Maxine Waters Act provisions relating to pre-instruction examination requirements, class schedule changes, and module changes, but must comply with all of the Act's other requirements. (See Section 94787)

Article 6 - General Standards for All Postsecondary Institutions

The provisions in this Article are similar to requirements in the old Act. The following are some notable exceptions:

♦ The financial responsibility standards have been modified as follows:

⇒ sufficient funds and accounts receivable (cash or assets that can be converted into cash within seven days) must be available to pay all operating expenses due within 30 days.

⇒ at the end of its latest fiscal year, an institution must have had a current ratio (current assets to current liabilities) of 1.25 to 1.00; or, when another government agency such as the US Department of Education requires an institution to file annual financial audits prepared by a CPA, that agency's current ratio standard applies if it is at least 1.00 to 1.00. (See Section. 94804)

⇒ if an institution is required to file a financial statement, that statement must be reviewed or audited by a CPA if the institution has an annual gross revenue of \$750,000 or more, and only must be compiled if the institution has an annual gross revenue of less than \$750,000. (See Section. 94806).

♦ Licensing exam preparation schools will now have to disclose pass rates of their students on the exams. (See Section. 94816)

♦ If a student has not made a full payment of tuition and fees, the institution may withhold that portion of the grades or transcript that corresponds on a pro rata basis to the amount of the tuition or loan obligation the student has not paid. (See Section 94828)

♦ The Bureau is required to conduct periodic, unannounced reviews and investigations. In scheduling those reviews and investigations, considera-

tion will be given to situations where there is reason to believe that a compliance problem exists. (See Section 94835)

♦ At the Bureau's request, an institution during normal business hours must make available for inspection and copying all records required to be maintained that relate to the institution's compliance with the law. (See Section 94835)

♦ Renewal applications need only include a description of any changes made by the institution since the time the institution's application was last reviewed by the Council. (See Section 94840)

♦ Before an institution may be considered for approval or renewal of approval to operate, the institution must pay all annual fees, STRF assessments, costs, penalties, and expenses in arrears retroactive to January 1, 1990. (See Section 94841)

♦ Change of ownership provisions remain virtually the same, except that a change from for-profit status to non-profit status is made explicitly a change of ownership. (See Section 94846)

Article 7 - Maxine Waters Student Protections Act (Article 2.5 in old Act)

All programs and institutions must continue to meet the course performance standards of 60% completion and 70% placement. (See Section. 94854(a))

The definition and exclusions from calculation for the placement rate have been changed considerably. In addition to the current exclusions for death, disability, illness, pregnancy, military service, or participation in the Peace Corps or the Domestic Volunteer Service in computing the placement rate, students may now be excluded from the placement rate calculation if they (1) continue their education at a higher academic level in an area related to or using skills learned during the program for which the rate is calculated, or (2) are in possession of a valid INS Form I-20 (student visa). (See Section 94854(n))

Part-time employment, newly defined as at least 17.5 hours but less

than 32 hours per week, is now considered a “placement.” Students, both at enrollment and at graduation, must document in their own handwriting that they intend to work part-time after graduation. (See Section 94854 (k)(2)(A))

Job-outs may now be considered a placement for students who drop after completing 75% of the program because the students obtained employment for at least 60 days in the occupation or job for which the program was represented to lead. No more than 10% of the institution’s total number of placed students can job-out in the placement rate calculations. (See Section 94854(o))

The Bureau must adopt regulations to specify the job tasks that will be counted in meeting the hour requirements for full-time and part-time employment for self-employed persons. (See Section. 94853(k)(2) (A))

The 50-mile limitation on branch campuses has been eliminated. However, the institution may not establish a branch or satellite campus if the student loan default rate of the institution exceeds 25% for two or more years, as published or determined by the US Department of Education, or if the establishment of the branch or satellite would facilitate avoidance or evasion of state or federal law. (See Section 95857)

The Bureau must develop standards and procedures for submission of annual report data electronically or on computer disk, in a standardized format. (See Section 94861)

Institutions that include the self-employed graduate or exclude the continuing education or I-20 graduate in their placement rate calculations must list the number of students in each of those categories in their annual report. (See Section 94861(e))

Institutions must file with the Bureau a financial report every two years. As noted above, institutions with annual gross revenues at or exceeding \$750,000 must file audited or reviewed reports; all other institutions file compiled reports. (See Section. 94862 and 94806)

English as a second language (ESL) requirements were significantly changed by SB 819, which became

effective upon passage in July 1997. The requirements in AB 71 are identical to those in SB 819. The absolute 100% refund has been eliminated. Instead, institutions providing ESL instruction will be subject to the pro rata refund requirements applicable to all vocational institutions. Thus, a 60% pro rata refund is possible for institutions demonstrating proficiency pursuant to Section 94870(g) below. (See Section 94865)

- ◆ If at the end of an ESL program a student has not demonstrated 6th grade English proficiency, the institution must continue to provide instruction without charge up to 150% of the normal program length (similar to the federal student aid satisfactory progress maximum length standard). (See Section 94865(h))

- ◆ The Bureau must adopt regulations regarding the means that institutions providing ESL instruction must use to document the nature of the student’s existing knowledge, training, and skill. (See Section 94865(n))

The general refund requirements do not apply to a student enrolled in a program in which (1) all of the student’s tuition and fees are paid by a third-party organization (e.g., JTPA agency, ROP/ROC, PIC, or a vocational rehabilitation program), (2) the student is not obligated to repay the third-party organization or does not lose time-limited benefits, and (3) the third-party organization and the institution have a written agreement that no refund will be due to the student if the student withdraws prior to completion. (See Section 94869 (e))

A vocational institution will be subject to a 60% pro rata refund requirement and not a 100% requirement if it:

- ◆ submits to the Bureau a compliance report prepared by an independent CPA in accordance with AICPA rules that for a period of two years prior to the compliance report:

- ⇒ the institution has provided timely and accurate refunds (no refund violations in excess of three or one percent, whichever is greater, of the students owed refunds);

- ⇒ the institution has an aggregate completion rate of 70% or more, an aggregate placement rate of 80% or more, or a combined completion and

placement rate (mathematical product) of 56% or more; and

- ⇒ in attesting to the institution’s compliance, the CPA must review a statistically valid sample of the completion and placement data and information upon which the rates were based.

- ◆ has received a determination by the Bureau that it has not materially violated the law (an adverse decision may be appealed, but the institution may not use the 60% refund policy while under appeal; loss of appeal results in one year restriction on reapplying):

An institution that subsequently is determined by the Bureau, a court or other government agency to have materially violated the law, or willfully submitted inaccurate information will lose the 60% refund status for three years and may be subject to other sanctions or remedies allowed by law. This determination may be appealed.

The CPA’s initial compliance reports will be submitted simultaneously to the Bureau and the institution. The institution may then submit to the CPA and the Bureau the institution’s comments, suggested corrections, or exceptions to the initial report.

The Bureau may designate acceptable alternative reviews, in lieu of an independent CPA report, for small institutions.

Schools eligible for the 60% pro rata refund may not advertise that it qualifies for a “good school” or “high performance” exemption. (Section 94870(g))

Contrary to what you may be told by some reviewers of the new law, non-ESL testing can continue to be given by the institution on its premises or by an independent testing agency. (See Section 94872(d)(3))

Article 8 - Standards and Evaluation Procedures for Degree-Granting Institutions

The Committee of Bar Examiners of the State of California, instead of the Bureau, will be responsible for the approval, regulation, and oversight of degree-granting law schools that (1) exclusively offer bachelor, master, or doctorate degrees in law (e.g., Juris

Doctor), and (2) are not otherwise exempt under the general exemption provision in Article 3. Unaccredited law schools, and those non-law and below-the-bachelor law programs at an exempt law school remain under the Bureau's jurisdiction. (See Section 94900(c))

The Bureau may grant an approval to operate for up to five years if the institution has been in compliance with the law for the past three years. (See Section 94901(c)(1))

An institution may submit an application that includes some or all of its separate operating sites. (See Section 94901(a))

An application will include a single fee based on the number of branches, satellites, and programs covered by the application. Renewal applications need only include information regarding changes made at the sites or to the programs since the previous application. (See Section 94901(a))

If the application includes branches and satellites, the Bureau must inspect the branches and may inspect the satellites.

An institution may not advertise its programs as approved unless each degree program has been approved. All operations of the institution pertaining to California degrees, including out-of-state and out-of-country, must be reviewed by the Bureau. (See Section 94904(i))

An out-of-state, degree-granting institution may also include some, or all, of its separate operating sites under one application. The application will include a single fee based on the number of locations and, for renewal applications, need only include information regarding changes made since the previous approval. (See Section 94905(e))

Article 9 - Standards and Evaluation Procedures for Non-degree-Granting Institutions

Virtually all of the requirements in current law have been incorporated into the new law (AB 71 and SB 819), except the following changes:

- ◆ All of the changes noted in Article 8, except the first change relating to degree-granting law schools.

- ◆ The Bureau must review the operations of an institution both within and outside California, including overseas. (See Section 94915(d))

Article 9.5 - Registered Institutions

The new law establishes a new "registered" status that requires the submission of minimal background information to the Bureau, including such things as ownership statement, overview of the educational programs, description of the refund policy, and a copy of the catalogue. One of the purposes of the registered status is to ensure that the Bureau has a record of all educational services provided in California.

The following educational services are eligible for registered status:

- ◆ continuing education instruction
- ◆ intensive English language programs for non-US citizens
- ◆ short-term career training
- ◆ short-term seminar training
- ◆ preparation for licensure certification (See Section 94931(c))

Some additional requirements are added depending on the nature of the service. For example:

- ◆ Institutions providing short-term career training programs must comply with the financial responsibility and audit requirements of sections 94804 and 94806. (See Section 94931(d)(8))

All registered institutions, except for those providing short-term career training, must state that their training is "registered" with the state, but they are prohibited from using the words "approval," "approved," "approval to operate," "approved to operate," "authorized," "licensed," or "licensed to operate." (See Section 94931(g))

Each institution must develop and report its refund policy. The refund policy applicable for intensive English language instruction is specified in the Act. That refund has to be 60% pro rata if the student transfers to another school, returns to his/her country of residence, or gains admittance to a college or university. The 60% pro rata refund is modified by a somewhat complicated adjustment. (See Section 94931.2(a))

Article 10 - Fees and Costs

Current fees and reserves under the control of the Council will be credited to the administrative fund under the control of the Bureau effective January 1, 1998. (See Section 94932(a))

Effective January 1, 1998, at least 50% of the funds appropriated to the Bureau must be used for enforcement costs. The definition of "enforcement" is fairly broad and includes mediating student complaints, managing on-site evaluations, and taking action against violators "while ensuring due process for all institutions." (See Section 94932(b))

The Bureau must adopt a fee schedule that includes charges not in excess of the actual costs of approving or renewing the approval of institutions. On January 1, 1998, the Bureau must reduce the application fees for approval and re-approval to operate, and the annual fees that are in effect on December 31, 1997, as follows:

- ◆ by 5% for institutions whose gross revenues are \$1.0 million or more
 - ◆ by 10% for institutions whose gross revenues are between \$100,000 and \$999,999
 - ◆ by 15% for institutions whose annual gross revenues are less than \$100,000. (See Section 94932(c))
- Any institution more than 30 days delinquent in the payment of any fee or order for the recovery of costs and expenses may be assessed a penalty fee. (See Section 94934)

Article 11 - Agents and Agencies

The requirements for registering agents and the limitations on and requirements for their activities are similar to current law. An owner of at least 51% of the interest of an institution is not considered an agent. (See Section 94940)

Article 12 - Student Tuition Recovery Fund and Student Obligations

The Student Tuition Recovery Fund (STRF) remains in existence. In addition to the two current sub-accounts for degree-granting and vocational schools, a new sub-account is established for institutions charging

tuition/fees of less than \$1,000. (See Section 94944)

The following new schedule of STRF assessments was adopted for tuition:

- ♦ less than \$1,000, the assessment is \$1.00 per student
- ♦ between \$1,000 and \$2,999.99, the assessment is \$2.50
- ♦ between \$3,000 and \$5,999.99, the assessment is \$3.50
- ♦ between \$6,000 and \$8,999.99, the assessment is \$4.50
- ♦ \$9,000 and more, the assessment is \$5.50 (See Section 94945(a))

The maximum amount that can be taken from the STRF by the Bureau for administrative costs is \$100,000 for degree-granting institutions, \$300,000 for vocational institutions, and \$30,000 for low-tuition (less than \$1,000) institutions. (See Section 94945(b))

Article 13 - Administrative and Judicial Procedures

The Attorney General, district attorneys, and city attorneys may investigate complaints and may independently or jointly with the Bureau bring civil actions. The Attorney General may represent the Bureau for suspension, revocation, denial, and conditional approvals. (See Section 94952) The Bureau may bring an action for equitable relief for violations of the law. (See Section 94955(a))

In addition to other enforcement actions, the Bureau may issue a citation for violations of the law. The citation may include an order of abatement or the assessment of an administrative fine of up to \$2,500 for each violation. The institution has the right to request a hearing to appeal the citation. (See Section 94957)

Complaints will be handled as they are currently, except DCA will mediate complaints to streamline the complaint resolution process. (See Section 94960)

An emergency action to suspend an institution for violations of the law is subject to specific statutory due process and administrative requirements. (See Section 94970)

For all other actions (denial, suspension, revocation, conditional approval), the new California Administrative Procedure Act (APA) that became operational on July 1, 1997,

shall be used by the Bureau. (See Section 94975)

Institutions that willfully committed a violation or failed to make correct refunds upon written demand of the student will be subject to penalties of up to two times the damages sustained by the student. (See Section 94985)

Legal actions may be brought within three years of the discovery of the facts constituting grounds for commencing the actions. (See Section 94985(e))

Article 14 - Bureau Reports

The Bureau will be subject to a sunset review process conducted by the Joint Legislative Sunset Review Committee in 2001 and every four years thereafter. A report will be sent to the Governor and the State Legislature. (See Section 94990)

An annual report will be submitted by the Bureau to the Legislature and to the California Postsecondary Education Commission summarizing the activities during the previous fiscal year. (See Section 94995)

Article 15 - Severability

The provisions of the law are severable, i.e., the invalidity of one provision does not affect the validity of another provision. (See Section 94998)

Article 16 - Termination

Sunsets the law on January 1, 2005. (sec. 94999)

The Bureau will have the authority to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Article 7. (See Unemployment Insurance Code, Section 1095(u))

All funds currently in the Private Postsecondary and Vocational Education Administration Fund and in the Student Tuition Recovery Fund on December 31, 1997, will remain in those funds and may be used by the Bureau for administering the new law. (See Section 5 of AB 71)

All causes of action filed under current law are preserved and eventually will be enforceable if reduced to

final judgment. (See Section 6 of AB 71)

A Highlight of the Conflicts in the New Act

In drafting the new Act, several conflicts or ambiguities were created. The following are highlights of some of those areas that are known to DCA as of this update:

- ♦ Refund requirements for vocational institutions to students were changed from 30 days to 10 days. This may cause administrative problems for institutions. More importantly, this change may harm students because they will be required to return all equipment for which they want a refund within 10 days, or face loss of the refund. Section 94867, which sets forth the student's cancellation rights and the refund procedure with which vocational institutions must comply, requires that refunds be made within 10 days of the date on which the student cancels. This conflicts with Section 94868, which sets forth the contents of the notice informing students about their cancellation rights and states that the institution must pay the refund within 30 days.

- ♦ Section 94790(i), which purportedly exempts a type of institution from compliance with the Maxine Waters Student Protection Act, is meaningless, unenforceable, and totally ineffective. It states, extremely circuitously, that an institution that provides two types of educational services, both of which are exempt from the Maxine Waters Act, does not become subject to the Maxine Waters Act simply because it provides two exempt services rather than only one exempt service.

- ♦ Several of the total or partial exemptions from the Act, for example, Sections 94750 and 94739(b)(7)(D), are written so as to make it very difficult to determine which institutions are exempt, or from what they are exempt.

- ♦ Section 94870(e)(4) provides that for the purpose of calculating the amount of a refund, a student is deemed to have withdrawn from correspondence or distance-learning instruction if the student fails to submit a completed lesson within 60 days of the

♦ date it is due. However, for purposes of determining the date on which the refund must be paid, this section provides that the date of the student's withdrawal shall be deemed to be the date on which the student submitted the last completed lesson. Since the Act requires that refunds upon withdrawal be paid within 30 days of the date of withdrawal, this section requires correspondence and distance-learning institutions to provide the student with a refund 60 or more days before the institution can determine whether the student has withdrawn. It is impossible to comply with this section.

Where conflicts and ambiguities in the new Law exist and are known to DCA, DCA may elect not to enforce the provision until clean-up legislation can be enacted to resolve the conflict or until administrative regulations are adopted to clarify and/or interpret the provision.

For example, institutions that provide refunds within 30 days or within 10 days will be in compliance until the Bureau, by regulation, resolves this conflict. This approach will allow schools to know the rules and comply with the law.

A Highlight of the Administrative Regulations to Be Adopted by DCA

In addition to the many regulations that have been cited in the previous section *A Highlight of the New Act*, DCA must adopt regulations to implement many of the provisions of the new Act. For example, DCA must adopt regulations to implement the following:

- ♦ The new provisions related to "good schools".
- ♦ The new provisions related to "registered institutions".
- ♦ The new provisions related to "cites and fines".
- ♦ "Fee reduction" provisions.

If provisions of the new Act are unclear or require that a new process be delineated, regulations must be adopted before these types of provisions of the new Act can be implemented.

Moreover, DCA must review all existing regulations to determine which regulations must be repealed because they are no longer consistent with the new Act.

Questions and Answers regarding DCA and the New Act

DCA has received many questions from schools by telephone and in writing. In addition, a DCA representative recently attended CAPPS Annual Convention in Southern California and many questions posed at this convention have been included in this section of the *Update*.

It is important to note that the answers provided are based upon DCA's knowledge of the backlogs and situations as of the present date. As situations change, further research of laws are conducted, processes are streamlined, and regulations are adopted, these answers may change. However, DCA is committed to keeping schools and students advised of these changes as they happen.

Q: When will a Bureau Chief be appointed by Governor Wilson?

A: The Governor's Office is currently working with DCA to identify potential candidates for this position. The position does not become available until January 1, 1998, and the Governor's Office plans to have a Bureau Chief selected and appointed soon thereafter. In the interim, DCA has formed an Executive Transition Team and appointed a Senior Executive from within DCA to lead this team. Ms. Cindy Thompson, currently the Chief of DCA's Administrative and Information Services Division, will lead the team and has agreed to accept a permanent appointment as the Chief Operations and Administrative Officer of the new Bureau on January 1, 1998. Ms. Thompson has served DCA in various capacities for the last 19 years. During her tenure she served in similar roles to her new position for two regulatory programs.

Q: When will the Bureau's Advisory Committee be appointed and what will be the composition of this Committee?

A: The DCA Transition Team is currently developing the composition of the

Committee. The new Act requires that the Committee include approximately equal representation of institutions and student advocates, and that employers who hire students also be represented. Once the composition of the Committee is developed, DCA will begin accepting applications along with letters of recommendation for Committee members. DCA hopes to have the Committee in place within the 1st quarter of the new calendar year.

Q: Will current staff of the Council be transferred to DCA?

A: The current civil service staff of the Council will be transferred to DCA on January 1, 1998, in their current classifications.

DCA is developing a staffing plan to begin hiring new staff to work at the Bureau. However, given the significant reduction in revenues effective January 1, 1998, DCA is exploring ways to streamline the work as well as determine whether the work can be performed by other civil service classifications.

Given the need for additional educational specialists to perform curriculum and site reviews, it is likely that DCA will administer a civil service examination to identify candidates currently in the private sector who are qualified to perform this type of work and who are willing to work for the Bureau on either a full-time or a part-time basis.

Announcements of the examination will be provided to all approved schools as well as community colleges. As an interim measure, DCA is exploring the feasibility of hiring retired teachers and educators with the appropriate background.

Q: What will be DCA's approach to the backlog of approvals pending at the Council?

A: DCA is aware that there is a pending workload of more than 500 site visits that must be conducted to complete the approval process for institutions. The resolution of this workload will be one of DCA's highest priorities. DCA is currently working with staff of the Council to

establish a priority system that balances the needs of students and schools alike.

DCA is also aware that institutions have received letters of temporary approvals that will expire on December 31, 1997, and that this situation is causing serious problems for the schools as well as the students that are currently enrolled. Again, DCA is working with the Council to identify an immediate solution to this problem. However, DCA presently does not have the authority to take action independently until January 1, 1998.

Q: Will the Bureau continue to have a field office in Southern California?

A: Yes. At the present time, DCA plans to retain a field office in Southern California.

Q: How long will the process of developing and implementing regulations take?

A: The elapsed time for the regulation adoption process can average 6-24 months. Following the formal adoption of regulations and approval of the regulations by the Office of Administrative Law, the Bureau must wait at least 30 days before the regulations can be implemented. DCA plans to have an information package for its first set of regulations available for distribution and public comment by the end of January. DCA hopes to include proposed regulations that will provide sufficient guidelines to schools, allow DCA to implement the "good school" and "registered institutions" provisions as well as the "cite and fine" program. However, because of the large volume of regulations that the new Act requires and necessitates, DCA will not be able to prepare a complete set of regulations within the short timeframe needed to implement the Act and eliminate the backlogs in a timely manner without disruption to schools and students. DCA plans to propose an initial regulation package which addresses as many of the issues as feasible, but anticipates that it will have to propose several further sets of regulations to

address specific issues before the process is complete.

DCA's ability to meet its target date for the initial set of regulations will be influenced by its ability to hire appropriate staff to develop this regulation package as well as address the backlogs.

Q: What will be the process for developing regulations for the new Act?

A: DCA is required to adopt regulations pursuant to the Administrative Procedures Act. DCA plans to hold at least two informational hearings on its proposed regulation package to take comments regarding its proposal. Based upon these comments, DCA may withdraw some of the proposed regulations to establish a special technical committee to assist DCA if it is determined that the proposal needs considerably more work and special expertise is needed. Once the informational hearings have been held, the regulation proposal will be amended to incorporate those comments that DCA believes have merit. A formal regulatory hearing will be held prior to the completion of DCA's regulation package. Following this hearing, if no additional amendments are necessary, DCA will submit the regulation package to the Office of Administrative Law for review and approval.

Q: Will DCA appoint specific individuals, e.g., by type of institution, to assist schools and answer questions concerning the new Act?

A: Once the Bureau is fully staffed, it is likely that specific individuals will be appointed to assist schools and answer questions. However, given the current backlogs and the lack of adequate staffing, DCA cannot estimate when these types of assignments can be made. In the interim, staff will be trained to consistently answer questions. DCA is aware of the problems that inadequate or incomplete information creates in any regulatory environment and plans to

implement guidelines as soon as possible to guard against inconsistencies.

DCA is also aware that licensees "shop for answers" to get the answer they want. This type of "shopping" will be discouraged. DCA asks that all schools consider the pending workloads and minimize telephone contacts unless they are absolutely necessary. Instead, DCA would like schools to pose their questions in writing so answers can be researched and disseminated widely to benefit all schools.

Q: What will be the process for the dissemination of information?

A: Initially, DCA plans to distribute *Updates* similar to this one to communicate with schools. When questions are posed by schools in writing and the answers have been researched, these answers will be disseminated to the schools through these *Updates*. As soon as is feasible, DCA plans to disseminate *Bulletins* for schools over the Internet to save money.

Contrary to some of the information that has been disseminated some individuals, no association or private individual has been or will be privy to information that requires schools to enroll in costly seminars to obtain information about DCA's plans. DCA is committed to distributing *Updates* to all schools at least quarterly so schools may avoid these types of costs.

Q: If a school plans to open a branch before the end of the year, should the application be forwarded to DCA?

A: No. Applications for approvals, re-approvals or certifications of any type should continue to be forwarded to the Council. When DCA receives these types of documents now, DCA simply delivers them to the Council. Bypassing the Council will simply cause unnecessary delays. Even after January 1st, the Bureau's offices will be located at 1027-10th Street in Sac-

ramento and 300 South Spring in Los Angeles.

Q: If a school has a temporary approval that expires on December 31, 1997, what happens on January 1, 1998?

A: As previously indicated in this *Update* even though DCA currently has no authority to act independently until January 1, 1998, DCA is working with staff of the Council to develop a strategy to resolve this issue. Unfortunately, at this time, DCA is unable to give the schools a definitive answer. Until that time, DCA asks for your patience. DCA knows that these temporary approvals are causing undue hardships for the schools and the students, and is committed to resolving the problem as soon as possible. Hopefully, within the next few weeks the Council and DCA will have a resolution and all schools will be notified.

Q: If a school has been approved and has now applied to the US Department of Education for financial aid, will the school need to reapply with the Bureau?

A: No. Since the approval provided by the Council will continue to be valid after the Bureau assumes responsibility, the US Department of Education should be able to process the school's application. The Bureau will not require an unnecessary re-application for approval in this type of situation. However, if a school is scheduled for re-approval and fails to file an application for re-approval, the school would likely encounter problems with DOE or any other type of public agency when seeking financial aid.

Q: Will the qualifications change for the certification of school personnel, e.g., directors, instructors?

A: No. The provisions in the new Act are essentially the same as the old Act. If applications for certification or renewal of certifications have been filed with the Council, a new application will not be required by the Bureau. DCA is aware that there is a significant backlog in this area as well and is currently assessing this workload to determine how this backlog can best be eliminated.

Q: What are DCA's priorities in processing pending applications, e.g., change of ownership, new course approvals, new schools approvals, school re-approvals?

A: At the present time, DCA plans to prioritize the processing of pending applications as follows:

- ◆ Changes of ownership and new program approvals for approved schools will be given the highest priority. The school's file at the Council, including complaint and investigation files, will be reviewed. If no problems are noted, and, if feasible, a site visit will be not conducted. However, those schools that require a site visit will likely experience delays.

- ◆ Applications for schools that have temporary approvals (new schools) will be given the next highest priority. These schools pose the greatest risk to students and site visits will be scheduled as soon as possible.

- ◆ Applications for re-approval for schools with conditional, provisional or probationary approvals will be given the next highest priority. Site visits will be prioritized based upon a review of the issues cited in the original approval, the number and type of complaints pending or closed, and any investigative information that may be available. DCA will also review reports from private accrediting bodies, and other governmental agencies, e.g., DOE, Student Aid Commission, Vocational Rehabilitation, when prioritizing this workload.

- ◆ Applications for re-approval for schools with unconditional approvals who are not accredited by a private

accrediting body will be given the next priority. Again DCA will review all available materials to prioritize the site visits for these types of schools.

- ◆ Applications for re-approvals for schools with unconditional approvals, who are accredited by an agency recognized by the US Secretary of Education and where no negative information is found will be given the lowest priority. These schools pose the least risk to students.

DCA plans to identify a method to ensure that prior and existing approvals are maintained until site visits can be conducted. Unfortunately, the new Act does not provide for the waiver of site visits. Therefore, site visits must be conducted for virtually all types of pending approvals.

Q: If an institution has applied with the Council for re-approval and has received a temporary approval from the Council, how long will it take to receive a permanent approval?

A: With a pending backlog of 500 plus site visits, DCA is unable to estimate how long it will take to receive permanent approval at this time. Once appropriate staff is hired and trained, and an adequate plan to eliminate this backlog has been developed, DCA will communicate what schools may expect in terms of the elapsed time for permanent approval.

Q: Will DCA use the same forms that were developed by Council?

A: Initially, DCA will need to use the same forms that were developed by the Council. Over time, DCA may revise these forms to streamline processes or to implement regulatory changes. Except as necessary in order to comply with the new Act or regulations or only when it is clear to DCA that a form is creating significant problems for schools or the Bureau will it consider changing forms over the next year.

Contrary to some announcements that have been brought to DCA's attention, DCA has not revised any forms to date.

Q: Will reporting policies be simplified?

A: Over time, reporting policies will be simplified. However, reporting policies will not be changed immediately. The Bureau must prioritize the work that is currently pending to eliminate backlogs and the problems associated with these backlogs. As time permits, reporting policies will be reviewed and, where feasible, amended.

Q: Will the Title 38 program for Veterans continue to be the responsibility of DCA?

A: Yes. The Council and DCA are currently in contact with the US Veterans' Administration to finalize its annual contract with the State of California for the Title 38 program.

Q: Will institutions who offer degree-granting programs, non-degree granting programs and short-term career training programs be exempt from Article 2.5?

A: Institutions that offer different types of programs are subject to the provisions that apply to each type of program. For example, as posited in this question, the degree-granting programs would be subject to those provisions of the laws and rules that apply to degree-granting programs, the non-degree granting programs would be subject to those provisions of the laws and rules that apply to non-degree granting programs, and so on. Therefore, if an institution decides to offer a mix of programs, it must comply with the appropriate laws and rules that govern each program.

Q: Will DCA respond to the complaints that have already been filed with the CPPVE but have not yet been resolved?

A: Yes. The Council has already delegated this workload to DCA through a Memorandum of Understanding. DCA's Complaint Mediation Division has reviewed most of the pending complaints and will begin the mediation process. DCA plans to mediate disputes to the satisfaction of the student and the school. When the mediation process is concluded, the mediation staff will review the school's file and prepare a profile of complaints that have been closed over the past several years.

If patterns of complaints are established, DCA plans to meet with the school to review its complaint profile to develop a corrective action plan. If the complaint profile warrants, DCA staff may contact other agencies to determine whether complaints have been received by these agencies concerning the same types of complaints prior to the office conference with the school. When complaint profiles indicate that the problems raised in the complaints have been a consistent and continuing problem, an unannounced visit may occur.

Q: The Bureau is authorized to conduct unannounced visits. How will the Bureau use this authority?

A: DCA currently utilizes a "trigger" and "targeting" system to enforce the laws and rules of its bureaus and programs. Complaint profiling and information from other agencies are used to target unannounced visits. When the situation and information warrant, DCA may conduct an undercover operation to determine whether a licensee is intentionally ignoring the law. Since DCA will not have sufficient information at the outset, DCA will need to develop a list of "triggers" that will allow DCA to

uniformly and consistently authorize unannounced visits and/or undercover activities.

Q: How will DCA discipline schools that are not meeting the expectations of DCA?

A: As can be seen from the previous answer, DCA takes its enforcement responsibilities seriously. Over the years, DCA has developed an enforcement tool kit that allows DCA to appropriately address the violation. DCA does not spend its limited enforcement resources to investigate every complaint. Instead, DCA mediates complaints, develops complaint profiles, and gathers information from other governmental agencies to target providers who violate the law. For minor technical violations, DCA issues Letters of Warning, Notices of Violation, and Citation and Fines. If the information indicates that there is a problem that can be corrected through the use of a corrective action plan, DCA schedules either education or enforcement conferences to assist the provider in complying with the law.

If information is gathered that indicates that there is substantial harm, fraud, or other issues of this nature, DCA conducts a formal investigation to obtain evidence to substantiate this information. If the formal investigation determines that the provider is creating substantial harm or committing fraud, an administrative disciplinary action will be initiated. If there is evidence of serious violations of law, DCA may pursue civil and criminal actions concurrently with an administrative disciplinary action. Over time, DCA will develop disciplinary guidelines that will be formally adopted as regulations to ensure that DCA consistently and fairly applies the use of its enforcement tools with regard to schools.

Q: What are DCA's plans for identifying vocational schools that are now operating without the proper approvals?

A: DCA has an Unlicensed Activity Unit (UAU) within its Enforcement Division. DCA is exploring the feasibility of training this staff to assist the Bureau in identifying schools that

have not applied for approval. DCA's UAU typically sends Letters of Warning to unlicensed businesses. Once adequate warning has been provided, if the unlicensed activity continues, DCA has the authority to issue an administrative citation and fine or an infraction citation (similar to a traffic ticket).

Once the Bureau has adopted its cite and fine regulations, administrative citations and fines can be issued. DCA plans to adopt a cite and fine schedule for unlicensed activity that

will discourage schools from unlicensed operation. In other words, it will likely be less costly to obey the law than to open an unlicensed school. If these efforts fail and there is evidence that students are being significantly harmed, DCA may choose to seek a temporary restraining order to ensure that the unlicensed activity ceases.